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OCTOBER TERM, 1900.

THE KNOXVILLE IRON COMPANY, Plaintiff in Error,

vs.

SAMUEL HARBISON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

BRIEF FOR DEFENDANT IN ERROR.

JOHN W. GREEN,
SOLICITOR FOR DEFENDANT IN ERROR.

SAMUEL G. SHIELDS,
OF COUNSEL.

S. B. NEWMAN & CO., PRINTERS AND BINDERS, KNOXVILLE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 174.

THE KNOXVILLE IRON COMPANY, Plaintiff in Error.

vs.

SAMUEL HARBISON, Defendent in Error.

Brief for Defendant in Error.

THE ISSUE.

This case draws in question the constitutionality of Chapter 11 of the Acts of 1899, of the General Assembly of the State of Tennessee, which provides that all persons, firms, corporations and companies using coupons, scrip, punchouts, store orders or other evidences of indebtedness to pay laborers, shall, if demanded, redeem the same in good and lawful money of the United States.

The plaintiff in error claims that this Statute takes away or is a limitation upon the right of contract and is obnoxious to Section 1 of the 14th amendment of the Constitution of the United States which declares that "no state shall make or enforce any law "which shall abridge the privileges and immunities of citizens of "the United States; nor shall any State deprive any person of "life, liberty or property without due process of law."

THE FACTS.

It is unnecessary to quote the Statute as it is set out in full in the brief filed for plaintiff in error, and the only additional facts that need be referred to are these:

The Knoxville Iron Company, plaintiff in error, is a corporation chartered by special Statute of the General Assembly of the State of Tennessee, Chapter 57, of the Acts of 1867-'68, with power to purchase, hold and dispose of real estate, iron, coal, etc., and to mine, sell and manufacture the same. Its principal office

is in Knoxville, Tenn., where it is engaged in the manufacture of iron. It also, as an adjunct to its principal business, mines and sells coal. Its mines are located in Anderson County, Tenn. It works about two hundred employees. Its regular pay day is on the Saturday of each month which falls nearest to the 20th day of the month. Upon this pay day each employee is paid in cash the amount due him to the first day of the month, but the Company always keeps the wages of the employees in arrears for the period of time between the first of the month and the pay day. It does not and will not pay cash to its employees for wages at any other time except on its regular pay days, but on every Saturday in the month, the Company offers to pay its employees the full amount due them if they will accept it in coal orders at twelve cents per bushel, and the afternoon of every Saturday is set apart for that purpose.

The plaintiff in error with these coal orders pays off about seventy-five per cent of the wages earned by its employees. Many of the employees who draw these orders get wages ranging from 90 cents to $1.20 per day and they sell the orders to get money to live on. The Company makes some profit in accepting said orders, and to some extent its coal business is increased thereby. Unless the employees take their wages in coal orders, they are compelled to submit to having said wages continually in arrears for about twenty days, that is from the first of the month to the regular pay day, about the 20th of the month.

The defendant in error, the *bona fide* holder by purchase of six hundred and fourteen of said accepted orders from said employees, demanded payment thereof from plaintiff in error within the time prescribed by the Statute, and upon payment being refused brought this suit. The Supreme Court of Tennessee, affirming the lower Courts, decreed against the Company for the full value of said coal orders, from which decree this writ of error is prosecuted.

Rec. p. 66-67.

THE STATE MAY BY STATUTE LAWFULLY LIMIT THE RIGHT OF CONTRACT.

It is conceded that the right to make lawful contracts is entitled to the same protection and is as much safe-guarded by the Fourteenth Amendment of the Constitution as "property" and

"liberty," and that the prohibition in said Amendment against depriving any person of life, liberty or property without due process of law, embraces and applies to contracts. But there are many familiar instances of the unquestioned power of government to restrain citizens from making or enforcing contracts, such as: buying or selling lottery tickets; agreements to pay usurious interest; contracts of married women; contracts of minors; contracts, not in writing, within the Statute of frauds; contracts for compensation exceeding $10.00 to pension attorneys; contracts releasing common carrier from his own negligence, and numerous others.

The presumption is always in favor of the validity of a statute if the contrary is not clearly demonstrated, and a statute is not to be pronounced void upon the ground of repugnancy to the Constitution, unless such repugnancy be clear and the conclusion that it exists inevitable.

Cooper vs. Telfair, 4 Dall. 14.
Fletcher vs. Polk, 6 Cranch, 87.
Pine Grove vs. Talcott, 19 Wall. 666.

Where a contract of insurance provided that the insurance company should not be liable beyond the actual cash value of the property at the time of its loss, and where a Statute of Missouri provided that in all suits brought upon policies of insurance against loss or damage by fire, the insurance company should not be permitted to deny that the property insured was worth at the time of issuing the policy the full amount of the insurance, this Court held that it was competent for the legislature of Missouri to pass such a law even though it does place a limitation upon the right of contract. The language of the Court upon this point is as follows:

"It would be idle and trite to say that no right is absolute. "*Sic utere tuo ut alienum non laedas* is a universal and pervading "obligation. It is a condition upon which all property is held. "Its application to particular conditions must necessarily be within "the reasonable discretion of the legislative power. When such "discretion is exercised in a given case by means appropriate and "which are reasonable, not oppressive or discriminatory, it is not "subject to constitutional objection."

Orient Insurance Co. vs. Daggs, 172 U. S. 557.

To the same effect is the holding of the Supreme Court of Tennessee, where the three-fourth clause in a policy of insurance was held invalid, and an act of the legislature providing that all such stipulations in policies are void, and requiring the insurer to pay the full value of the property destroyed, not exceeding the amount expressed in the policy, was held to be valid.

Dugger vs. Insurance Co., 95 Tenn., 250.

Where the legislature of Utah passed an act regulating the employment of workingmen in underground mines and smelters, and fixing the period of employment at eight hours per day, this Court held that said act was a valid exercise of the police power of the State and not in contravention of the Fourteenth Amendment. The same objection was urged in the case just quoted as in the case at bar, viz., that the act limited the right of contract. But the Court held that the fact that "both parties are of full "age and competent to contract does not necessarily deprive the "State of the power to interfere where the parties do not stand "upon an equality, or where the public health demands that one "party to the contract shall be protected against himself."

Holden vs. Hardy, 169 U. S., p. 366-397.

An act by the Legislature of Arkansas provided that whenever any corporation or person engaged in operating or constructing a railroad, shall discharge with or without cause any employee or servant, the unpaid wages of any such servant or employee then earned shall become due and payable on the date of such discharge without abatement or deduction. This Court construing said statute said "the right of contract is not absolute, but may be "subjected to the restraints demanded by the safety and welfare of "the state," and that this legislation was not an infraction of the "Fourteenth Amendment.

St. Louis Ry. vs. Paul, 173, U. S. 404.

A contract providing that a party shall not remove a cause to the Federal Court is void.

Home Ins. Co. vs. Morse, 20 Wall., 455.
Doyle vs. Continental Ins. Co., 90 U. S. 535.

Apply the principles and reasoning of the cases just cited to the facts of the case at bar. The Court of Chancery Appeals,

whose findings of fact under the Statute of Tennessee, creating said tribunal, are made conclusive and final, (see Acts of Tennessee, 1895, Ch. 76.) find, that *the employees of plaintiff in error are "systematically in the main settled with in coal orders instead "of cash, and where, though there is no compulsion in form, yet "in fact by holding back their wages, such a motive power is "brought to bear upon their freedom of choice as to practically "amount to coercion. * * * We think the facts found show a "species of compulsion where the defendant (plaintiff in error) "takes advantage of the necessities or of the improvidence of its "employees and so places them in a position where they feel com-"pelled to take their wages in coal orders."*

Rec. p. 89.

Is it not clear from this statement of fact that the plaintiff in error and its employees do not "stand upon an equality?" In the case of Holden vs. Hardy, *supra*, the Court declares that the legislature may interfere where the employer and employee do not "stand upon an equality."

In the case of Orient Ins. Co. vs. Daggs, *supra*, it is held that the legislature is vested with large discretion to be exercised in such matters in a reasonable way without oppression or discrimination. The facts above quoted show that *the plaintiff in error "takes advantage of the necessities or improvidence of its "employees and so places them in a position where they feel com-"pelled to take their wages in coal orders."* Can there be any "oppression" or "discrimination" on the part of the legislature in preventing the employer from taking advantage of the necessities and improvidence of its employees and in protecting the weak against the strong, by requiring payment of laborers wages in money instead of coal orders?

The Statute under consideration does not prohibit plaintiff in error from issuing coal orders or from paying its employees in merchandise. It may continue to do this the same as before, but the employee or *bona fide* holder has the option of requiring the redemption of such coal orders in money if presented for payment on a regular pay day or at any time within thirty days from their issuance. The Statute is in no sense prohibitory, it is merely regulative.

Plaintiff in error promised its employees when their services

were engaged to pay them a certain stipulated price in money for their labor. The Statute does not require the payment of a single penny in excess of the contract of employment, nor the payment in any other mode or medium than that fixed by the contract. The Statute simply regulates the method of payment; it does not shorten the time between pay days; it does not increase the amount of the wages; it does not make a contract between employer and employee; it simply requires the employer when it is demanded to pay the wages of the laborer in money according to the original contract.

THE STATUTE COMPLIES WITH THE DUE PROCESS OF LAW CLAUSE OF THE CONSTITUTION.

Law in its regular course of administration through Courts of justice is due process, and when secured by the law of the State, the Constitutional requirement is satisfied.

Leeper vs. Texas, 139 U. S., 462.

The act in question does not violate the "due process" clause of the Constitution. This clause is complied with where the person condemned has had sufficient notice and adequate opportunity to defend.

L. & N. R. R. vs. Schmitt, 177 U. S., 230.

In the case of Holden vs. Hardy, *supra*, it is stated that "this "court never attempted to define with precision the words 'due "process of law' * * * it is sufficient to say that no man shall "be condemned in his person or property without due notice and "an opportunity of being heard in his defense."

See also Slaughter House Cases, 16 Wall., 127.
Davidson vs. New Orleans, 96 U. S., 104.

THE STATUTE IS A LEGITIMATE EXERCISE OF THE POLICE POWER.

The act in question is a proper exercise of the police power of the State.

"The power of the State to provide for the general welfare "of its people authorizes it to prescribe all such regulations as "in its judgment will secure or tend to secure them against the "consequence of ignorance and incapacity as well as deception

"and fraud." This was said with respect to the power of the State to require a certificate to be issued by the Board of Health to each practitioner of medicine as a prerequisite to his practising his profession.

Dent vs. West Va., 129 U. S., 114.

The police power is not subject to any definite limitations, but is co-extensive with the necessities of the case and the safeguard of the public interests.

Camfield vs. United States, 167 U. S., 18.

Where the police power is invoked in good faith for the prohibition of a practice which the legislature has declared to be detrimental to the public interests, it will be sustained wherever it can be done without the impairment of vested rights. * * * Whatever is contrary to public policy or inimical to the public interests is subject to the police power of the State and within legislative control and in the exertion of such power, the legislature is vested with a large discretion, which, if exercised, *bona fide* for the protection of the public, is beyond the reach of judicial inquiry.

L. & N. R. R. vs. Kentucky, 161 U. S., 700.

A Massachusetts Statute prohibiting the erection of a fence unnecessarily exceeding six feet in height, maliciously maintained for the purpose of annoying the adjoining owner or occupant, is within the limits of the police power and is Constitutional, although not directly injurious to the public at large, because it was to the public interest to restrain this kind of annoyance by one neighbor of another.

Rideout vs. Knox, 148 Mass., 368.

An ordinance of San Francisco prohibiting the washing and ironing of clothes in public laundries and washhouses within certain prescribed limits between ten o'clock at night and six o'clock the following morning is within the police powers. In this case the court uses the following language: "The 14th Amendment "was not designed to interfere with the power of the State some- "times termed its police power to prescribe regulations to promote

"the health, peace, morals, education, and good order of the people "and to legislate so as to increase the industries of the state, de- "velop its resources and add to its wealth and prosperity."

Barbier vs. Connally, 113 U. S., 27.

A statute of New York providing that fishing nets in certain waters may be summarily destroyed by any person is a lawful exercise of the police powers. The State may interfere wherever the public interest demands it and in this particular, a large discretion is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.

Lawton vs. Steele, 152 U. S., 133.

An ordinance prohibiting any person from making any public address on any public ground, without the permit of the mayor is within the police powers.

Davis vs. Massachusetts, 167 U. S , 43.

The State can not so tie its hands that it may not revoke at its discretion lottery privileges and lotteries.

Douglass vs. Kentucky, 168 U. S., 488.

A Statute of Louisiana requiring dogs to be placed upon the assessment rolls and limiting any recovery by the owner to the value fixed by himself for the purpose of taxation, is within the police power.

Sentell vs. New Orleans, 166 U. S., 698.

In the case of Munn vs. Illinois, *post*, this Court cites approvingly a decision of the Supreme Court of Alabama upholding the legality of a Statute of that State authorizing the City of Mobile to regulate the weight and price of bread, and declaring that it did not interfere with the right of the citizen to pursue his lawful trade or calling in the mode his judgment might dictate.

Mobile vs. Yuille, 3 Ala., 140.

The foregoing citations apply solely to the rights of private citizens with respect to their private affairs. The principle is also illustrated by the large class of cases involving the police power of the State over *quasi* public corporations, such as rail-

roads, elevators, water companies, telegraph and telephone companies, etc.

Budd vs. New York, 143 U. S., 517.
Spring Valley Water Works vs. Schottler, 110 U. S., 347.
Chicago, etc., R. R. vs. Nebraska, 170 U. S., 57.
Slaughterhouse Cases, 16 Wall., 36.
Dow vs. Beidelman, 125 U. S., 680.
Munn vs. Illinois, 94 U. S., 113.

WAGES DUE TO THE LABORER ARE OFTEN AND IN MANY WAYS MADE THE SUBJECT OF LEGISLATIVE PROTECTION, AND SUCH STATUTES SO FAR FROM BEING CONSIDERED PATERNAL AND AS FINANCIAL MEASURES, AS IS ARGUED FOR PLAINTIFF IN ERROR, ARE UPHELD BY THE COURTS AS JUST MEANS FOR THE PROTECTION OF THE WEAK AGAINST THE STRONG.

Seamen's wages are regulated by Statute of the United States

U. S. Rev. Statutes, Sec. 4520.

Seamen are protected against new or unusual stipulations in the shipping articles, or against stipulations contravening the language and policy of the Statute.

25 Fed. Rep., 285.
27 Fed. Rep., 567.

In nearly all the States of the Union, stockholders in many classes of corporations are made individually liable for debts incurred for labor.

In many of the States of the Union, the wages of the laborer are exempt either in whole or in part from execution or attachment.

In perhaps all the States of the Union, the laborer, who is a mechanic, is given a prior lien upon the work done or materials furnished for the amount due him.

In many States the laborer is given a prior lien upon the assets of an insolvent firm or corporation for wages in arrears at the date of such insolvency.

The Bankrupt act passed by Congress in 1898 in Section 64 thereof expressly provides that "wages due workmen, clerks or

"servants, which have been earned within three months before "the date of the commencement of proceedings, not to exceed "three hundred dollars to each claimant," shall have priority.

So that it is no new thing for law making bodies to protect labor, and the Statute in question instead of being a departure from the beaten track is simply in line with the spirit of all legislation touching the laboring classes, who comprise so large an element of the population of our country. As stated in the opinion of the Court of Chancery Appeals in this case, *"as a rule they "are a dependent class, and more than any other need the protect- "ing power of the law. Their situation is such, and their habits "of life such, that they can not do a great deal in the way of self "protection in the matter of making contracts."*

It is true that in each of the instances cited "a financial benefit," against which plaintiff in error so strongly inveighs, is conferred upon the laborer, yet the legislation is not for that reason to be set aside and declared unconstitutional. These enactments, like the Statute involved in this suit, are justified because it is the duty of the State to afford protection to the weak, to the ignorant and to the improvident, and to guard its citizens against fraud and deception and to put employee and employer upon an equality.

It is improper for plaintiff in error to assume that *health, morals and safety* are alone concerned in the exercise of the police power.

As was said by this Court in the case of Dent vs. West Virginia, *supra*, the police power may be properly exercised for the protection of citizens against *ignorance, incapacity, deception and fraud.*

As was said in the case of Barbier vs. Connally, *supra*, the police power may not only be exercised for the protection of *health, morals* and *peace* but for *education, good order*, to *increase the industries of the State, develop its resources and add to its wealth and prosperity.*.

As was said in the case of Camfield vs. United States, *supra*, *the police power is not subject to any definite limitations but is co-extensive with the necessities of the case.*

As was said in the case of Holden vs. Hardy, *supra*, the

State may interfere where *the parties do not stand upon an equality.*

Statutes like the one in question are founded upon reasons similar to those which justify the passage of usury laws, concerning which the Supreme Court of Illinois declares, they "proceed upon the theory that the lender and borrower of money "do not occupy towards each other the same relations of equality "that parties do in contracting with each other in regard to the "loan or sale of other kinds of property, and that the borrower's "necessities deprive him of freedom in contracting and place him "at the mercy of the lender."

Frorer vs. People, 141, 111, 171.

SIMILAR LEGISLATION IN OTHER STATES HELD CONSTITUTIONAL.

A Statute of Massachusetts requiring manufacturers to pay the wages of their employees weekly was upheld by the Supreme Judicial Court of that State.

House Bill No. 1230, 163 Mass., 587.

The validity of a Statute requiring the wages of employees engaged in mining or manufacturing to be paid at least once every two weeks by all persons, firms, corporations, etc., engaged in such business was sustained in Indiana.

Hancock vs. Yaden, 121 Ind., 366.

In West Virginia, a Statute prohibiting any corporation, company, firm or person engaged in any trade or business from paying employees in any scrip, token, draft, check or otherwise than lawful money was held constitutional.

Peel Spli t Co. vs. State, 36 W. Va., 802.

In Kentucky, which has a constitutional provision on the subject, it is held that if the periods fixed for the payment of the laborers wages are so unreasonable as that his necessities force him to apply for and accept pay in checks for merchandise, the Statute of the State providing that wage earners shall be paid in lawful money, would be violated, notwithstanding the laborer consented to take the checks.

Avent-Beattyville Coal Co. vs. Commonwealth, Ky., p. 28 L. R. A., 273.

In Rhode Island a Statute requiring corporations to pay their employees weekly the wages earned by them to within nine days of the date of such payment, was sustained mainly on the ground of the reserved right in the Legislature to amend charters of corporations, but the Court in argument asserts that it is a proper exercise of the legislative power for the protection of the weak.

State vs. Brown Company, 18 R. I., p. 17 L. R. A., 856.

In Maryland an Act prohibiting the payment of employees of certain corporations otherwise than in legal tender money of the United States was upheld as being within the reserved right of the legislature to amend charters.

Shaffer vs. Union Mining Co., 55 Md., 74.

THE STATEMENT IN THE BRIEF FILED FOR PLAINTIFF IN ERROR TO THE EFFECT THAT THE OVERWHELMING WEIGHT OF AUTHORITY, IS OPPOSED TO THE CONSTITUTIONALITY OF STATUTES SIMILAR TO THE ONE IN QUESTION IS NOT SUPPORTED BY THE FACTS.

One of the cases cited by plaintiff in error in support of this position is the State vs. Loomis, where the Supreme Court of Missouri declared unconstitutional an act prohibiting "mining and manufacturing concerns" from paying wages otherwise than in lawful money of the United States. But this conclusion was based upon the want of "due process of law," and upon unconstitutional discrimination between employees, and is therefore not analogous.

Another case thus relied on by plaintiff in error, is the State vs. Goodwill from West Virginia, where a Statute prohibiting "persons engaged in mining and manufacturing" from paying labor in any kind of paper not redeemable in lawful money within thirty days, was declared unconstitutional. This, as in the case from Missouri, was also declared unconstitutional because discriminatory, and is therefore not authority in the case at bar. Besides the same Court later in the case of Peel Splint Co. vs. State, 36 West Va., 802, *supra*, held a similar act, free from the discriminatory objection, constitutional.

The decision from Kansas in the case of State vs. Haun also relief on by plaintiff in error, where the Statute as to wages was held unconstitutional, is based partly upon the ground that it is

class legislation, and partly upon the ground that it is an unauthorized interference with the right of contract.

The Pennsylvania decision relied on by plaintiff in error, does squarely hold that an act of the Legislature of that State similar to the one in question is unconstitutional and void because it prevents persons who are *sui juris* from making contracts.

So it is, the decisions of the highest Courts of Massachusetts, West Virginia, Indiana, Kentucky, Tennessee, Rhode Island and Maryland, some upon one ground and some upon another, uphold the constitutionality of these Statutes, while the highest Courts of Missouri, Kansas and Pennsylvania, upon grounds equally variant, deny their constitutionality.

Among the many cases which plaintiff in error cites and relies on in its brief as analogous to the case at bar, it will be noted that the decisions of the Supreme Courts of Illinois, Nebraska, Colorado and California with reference to the eight hour law are directly opposed to the conclusion of this Court in the case of Holden vs. Hardy, *supra*.

It will also be noted that while the decisions of the Supreme Court of Illinois and Colorado declare certain coal screening statutes illegal, the Supreme Court of Illinois held in a later opinion that another similar statute was valid, and the Supreme Courts of West Virginia and Kansas have likewise sustained coal screening laws passed by the legislatures of those states.

It would perhaps be unprofitable to multiply citations along this line as each case in large measure depends upon its particular facts, and upon the peculiar wording of the Statutes drawn in question.

It is sufficient to say that in no case has a statute of this character come under consideration which is less stringent or more absolutely fair to both employer and employee than the one here drawn in question. In the language of the Supreme Court of Tennessee "it is neither prohibitory nor penal; not special but general; tending toward equality between employer and employee in the matter of wages; intended and well calculated to promote peace and good order and to prevent strife, violence and blood-shed."

It neither interferes with existing contracts nor does it contain a prohibition against future contracts. It is not in the least

degree oppressive to the employer because it imposes no burden upon him which he did not assume when he engaged the services of the employee. It is necessary to the welfare of the employee, because it enables him to obtain the full amount of his wages without being compelled to take payment thereof in coal, which he can not consume, or in coal orders which he can not convert into money except at a costly discount. It is a proper exercise of the police power and is valid legislation fully sustained by both reason and authority.

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